IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 674 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAIYUDEEN HATHIBHAI NAGORI

Versus

SUB-DIVISIONAL MAGISTRATE

Appearance:

1. Special Criminal Application No. 674 of 2003

MR SATISH R PATEL for Petitioner No. 1

RULE SERVED for Respondent No. 1

MR RM CHAUHAN ld. APP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 16/10/2003

ORAL JUDGEMENT

By way of this petition, the petitioner has challenged the order passed by the Sub Divisional

Magistrate, Mehsana on 18.10.2003 under sec. 56(B) of the Bombay Police Act, 1951 removing the petitioner from the district of Mehsana, Patan, Sabarkantha, Banaskantha, Surendranagar, Gandhinagar and Ahmedabad city and Rural. The petitioner has also challenged the order passed by the Appellate Authority of the State Government passed on 8.4.2003 in an appeal filed by the petitioner against the order of Sub Divisional Magistrate, Mehsana on 18.10.2003.

As per the brief facts, a notice under sec. 59 of the BP Act, 1951 came to be issued against the petitioner stating that at least eight offence came to be registered against the petitioner from 1999 to 20001, out of which, one offence is registered under sec. 323, 504 and 506(2) of IPC, while others are registered under the Bombay Prohibition Act. The notice stated that the petitioner was involved in illegal activity and to restrict his illegal activity, why the petitioner be not removed from the above said districts for a period of two years. In response to the notice, the petitioner appeared, filed his defence and after hearing both the sides, the ld. Sub Divisional Magistrate, Mehsana passed the above said order to remove the petitioner from the above said districts for a period of two years. The order came to be confirmed by the Appellate Authority vide judgment and order dated 8.4.2003 as aforesaid, and hence, this special criminal application.

Ld. advocate Mr SR Patel for the petitioner and ld. APP Mr. RM Chauhan for the respondents were heard at length. Affidavit in reply filed by the Sub Divisional Magistrate, Mehsana is also taken into consideration.

Various grounds urged to attack both the decisions under challenge on behalf of the petitioner and controverted by ld. APP, it appears that the matter can be decided on the ground whether the notice issued by the Sub Divisional Magistrate, Mehsana under sec. 59 of the BP Act, 1951 is whether vague and on that count, the subsequent orders passed suffers infirmity.

On going through the notice under sec. 59 of the BP Act as served upon the petitioner in first part, it is only mentioned that as referred in the back of the notice, eight crimes came to be registered against the petitioner and even than the petitioner was indulging and continuing his illegal activities and to restrict such activities , the petitioner was required to be removed from the above said districts for two years. Undoubtedly, the notice does not specify the period from

which the petitioner indulged in the objectional activities and or area in which the petitioner continued is so-called alleged illegal activities. The facts of this case are covered by a decision of Division Bench of this court in the matter of Rajput Ranjitsing Jatubha vs. Vinay Vyas, Sub Divisional Magistrate, Palanpur and ors., as reported in 1986(1) GLR p. 478, wherein this court was pleased to establish that notice under sec. 59 of the BP Act, must disclose the period when and the area where alleged nefarious activities were carried on. The court further established that in that particular case that mere look at the allegation so-called suffers from the vice of vagueness, firstly, because no period was mentioned during which the alleged nefarious activities were carried on by the petitioner and secondly, no area or location was shown where such activities were carried on. The court further establishes that this infirmity must be treated fatal infirmity and the order of externment on that ground was quashed. In the present case also, while going through the notice, it is clear that neither period during which the alleged nefarious activities was carried on by the petitioner is mentioned nor the area or location is shown where such activities were carried on. These infirmities are fatal for passing an order of externment.

In the result, this special criminal application is allowed. The order impugned in this special criminal application passed by Sub Divisional Magistrate, Mehsana on 18.10.2002 removing the petitioner from the district Mehsana and other adjoining districts mentioned in the order is quashed and set aside and consequently, the order passed by the Appellate Authority in appeal on 8.4.2003 confirming the said order is also quashed and set aside. Rule is made absolute with no order as to costs. DS permitted.

(J.R. VORA, J.)
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